

Message Text

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FOR ALDRICH AND SIEVERTS

E.O. 11652: N/A

TAGS: ICRC, PARM, PFOR

SUBJECT: DIPLOMATIC CONFERENCE ON HUMANITARIAN LAW

1. FOLLOWING IS TEXT OF ARTICLE 18 BIS, PROTOCOL I, AS
PRODUCED BY THE WORKING GROUP. PARENTHESES REPRESENT BRACKETS
IN TEXT. BEGIN TEXT:

"1. IN THE IMPLEMENTATION OF THE PROVISIONS OF THIS CHAPTER
CONCERNING THE OBTAINING, THE RECORDING AND THE TRANSMISSION OF
INFORMATION ON PERSONS WHO ARE DETAINED, WHO HAVE DIED, OR HAVE BEEN
REPORTED MISSING AS A RESULT OF HOSTILITIES OR OCCUPATION, THE
HIGH CONTRACTING PARTIES SHALL BEAR IN MIND, AND RESPOND, TO THE
FULLEST EXTENT POSSIBLE, TO THE BASIC HUMAN NEED OF FAMILIES TO
KNOW THE FATE OF THEIR RELATIVES.

2. EACH PARTY TO THE CONFLICT SHALL RECORD INFORMATION ON
PERSONS WHO HAVE BEEN DETAINED, IMPRISONED OR OTHERWISE HELD IN
CAPTIVITY BY IT AS A RESULT OF HOSTILITIES OR OCCUPATION,
OR WHO DIE DURING SUCH DETENTION, (BEGIN BRACKET) AND IN RESPECT
OF WHOM NO PROVISION IN THIS REGARD IS MADE IN THE CONVENTIONS.
(END BRACKET)# SUCH INFORMATION SHOULD INCLUDE IF POSSIBLE THE FULL
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NAME AND AGE OR DATE OF BIRTH, AND THE DATE AND PLACE OF SUCH

DETENTION. ADDITIONAL INFORMATION, SUCH AS NAMES OF NEXT-OF-KIN, PLACE OF BIRTH AND RESIDENCE, AND IDENTIFYING NUMBER, SHALL ALSO BE RECORDED IF AVAILABLE.

3. EACH PARTY TO THE CONFLICT SHALL TO THE FULLEST EXTENT POSSIBLE FACILITATE AND, IF NEED BE, CARRY OUT THE SEARCH FOR, AND THE RECORDING OF, INFORMATION ON:

(A) PERSONS WHO HAVE DIED AS A RESULT OF HOSTILITIES OR OCCUPATION, (BEGIN BRACKET) AND IN RESPECT OF WHOM NO PROVISION IN THIS REGARD IS MADE IN THE CONVENTIONS. (END BRACKET) RECORDS SHALL BE KEPT OF THE DATE, PLACE AND CAUSE OF DEATH, AND OF THE LOCATION AND MARKING OF THEIR GRAVES OR OTHER LOCATION OF THEIR REMAINS.

(B) PERSONS WHO HAVE BEEN REPORTED BY ANOTHER HIGH CONTRACTING PARTY AS MISSING. THIS ACTION SHALL BE UNDERTAKEN AS SOON AS CIRCUMSTANCES PERMIT AND AT THE LATEST FROM THE END OF ACTIVE HOSTILITIES. SUCH OTHER PARTY SHALL PROVIDE NAMES AND OTHER INFORMATION ON SUCH PERSONS TO FACILITATE SUCH SEARCHES.

4. INFORMATION OBTAINED OR RECORDED PURSUANT TO THIS CHAPTER SHALL BE TRANSMITTED AS RAPIDLY AS POSSIBLE TO THE HOME COUNTRY OF SUCH PERSONS, EITHER DIRECTLY OR THROUGH THE PROTECTING POWER OR A SUBSTITUTE THEREFOR, THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND ITS CENTRAL TRACING AGENCY, A NATIONAL RED CROSS (RED CRESCENT, RED LION AND SUN) SOCIETY, OR ANOTHER (BEGIN BRACKET) IMPARTIAL (END BRACKET) HUMANITARIAN ORGANIZATION AS REFERRED TO ELSEWHERE IN THE CONVENTIONS AND THE PRESENT PROTOCOL. WHERE THE INFORMATION IS NOT TRANSMITTED THROUGH THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND ITS CENTRAL TRACING AGENCY, EACH PARTY TO THE CONFLICT SHALL ENSURE THAT SUCH INFORMATION IS ALSO SUPPLIED TO THE CENTRAL TRACING AGENCY.

5. (A) THE PARTIES TO THE CONFLICT SHALL ENDEAVOUR TO AGREE ON ARRANGEMENTS FOR TEAMS TO SEARCH FOR, IDENTIFY, AND RECOVER THE DEAD FROM BATTLEFIELD AREAS, INCLUDING ARRANGEMENTS, IF APPROPRIATE, FOR SUCH TEAMS TO BE ACCOMPANIED BY PERSONNEL OF THE ADVERSE PARTY WHILE CARRYING OUT THESE MISSIONS IN AREAS CONTROLLED BY THE ADVERSE PARTY. PERSONNEL OF SUCH TEAMS SHALL UNCLASSIFIED

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BE RESPECTED AND PROTECTED WHILE EXCLUSIVELY CARRYING OUT THESE DUTIES.

(B) PERSONNEL OF AN INTERNATIONAL HUMANITARIAN ORGANIZATION AS REFERRED TO ELSEWHERE IN THE CONVENTIONS AND THE PRESENT PROTOCOL MAY ASSIST IN CARRYING OUT THESE MISSIONS.

6. TO FACILITATE THE IMPLEMENTATION OF THIS CHAPTER, EACH

HIGH CONTRACTING PARTY IS INVITED TO MAKE MEANS OF IDENTIFICATION AVAILABLE TO ITS NATIONALS WHO MAY BE IN AN AREA OF ARMED CONFLICT AND WHO HAVE NOT BEEN ISSUED WITH AN IDENTITY CARD PROVIDED FOR UNDER THE CONVENTIONS.

CHAPTER II - REMAINS OF DECEASED.

7. AT ALL TIMES GRAVES AND, WHERE APPROPRIATE, OTHER LOCATIONS OF THE REMAINS OF PERSONS WHO HAVE DIED AS A RESULT OF HOSTILITIES OR OCCUPATION OR IN DETENTION RESULTING THEREFROM SHALL BE RESPECTED AND SHALL BE PROTECTED AND MAINTAINED AGAINST DAMAGE AND IMPROPER DISTURBANCE. INTERMENT OR CREMATION SHOULD BE CARRIED OUT INDIVIDUALLY AS FAR AS CIRCUMSTANCES PERMIT. CARE SHOULD BE TAKEN TO ENSURE THAT AVAILABLE INFORMATION ON THE IDENTITY OF THE DECEASED PERSON IS PRESERVED.

8. (BEGIN BRACKET) AS SOON AS CIRCUMSTANCES PERMIT (END BRACKET) THE HIGH CONTRACTING PARTIES IN WHOSE TERRITORIES SUCH GRAVES ARE SITUATED SHALL:

(A) (BEGIN BRACKET) ENDEAVOUR TO (END BRACKET) PERMIT ACCESS TO SUCH GRAVES (BEGIN BRACKET) AND OTHER LOCATIONS (END BRACKET) BY REPRESENTATIVES OF THE OFFICIAL GRAVES REGISTRATION SERVICES OF THE HOME COUNTRIES OF THE DECEASED AND BY REPRESENTATIVES OF AN INTERNATIONAL HUMANITARIAN ORGANIZATION AS REFERRED TO ELSEWHERE IN THE CONVENTIONS AND THE PRESENT PROTOCOL. ACCESS TO SUCH GRAVES (AND OTHER LOCATIONS) BY RELATIVES OF SUCH DECEASED SHALL ALSO BE PERMITTED AND FACILITATED AS SOON AS CIRCUMSTANCES PERMIT. (BEGIN BRACKET) THEY SHALL ALSO ENDEAVOUR TO PERMIT AND FACILITATE ACCESS TO SUCH GRAVES (BEGIN BRACKET) AND OTHER LOCATIONS (END BRACKET) BY RELATIVES OF SUCH DECEASED; (END BRACKET)

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(B) ENDEAVOUR TO AGREE ON ARRANGEMENTS WITH SUCH HOME COUNTRIES FOR THE PERMANENT PROTECTION AND MAINTENANCE OF SUCH GRAVES (AND OTHER LOCATIONS) (BEGIN BRACKET) AND FOR ACCESS TO GRAVES AS REFERRED TO IN THE PRECEDING SUB-PARAGRAPH; (END BRACKET)

(C) AT THE REQUEST OF THE HOME COUNTRY OR, UNLESS THE HOME COUNTRY OBJECTS, OF THE NEXT-OF-KIN, FACILITATE THE RETURN OF THE REMAINS OF SUCH DECEASED IF POSSIBLE. THE RETURN OF PERSONAL EFFECTS OF SUCH DECEASED SHALL ALSO BE FACILITATED.

9. IN THE ABSENCE OF ARRANGEMENTS AS PROPOSED IN ARTICLE 8(B) OF THIS CHAPTER, AND WHERE THE HIGH CONTRACTING PARTY IN WHOSE TERRITORY THE GRAVES (BEGIN BRACKET) AND OTHER LOCATIONS (END BRACKET) DESCRIBED IN THIS CHAPTER ARE SITUATED HAS OFFERED TO FACILITATE THE RETURN TO THE HOME COUNTRY OF THE REMAINS OF

SUCH DECEASED, AND WHERE SUCH OFFER HAS NOT BEEN ACCEPTED, THE HIGH CONTRACTING PARTY, AFTER FIVE YEARS FROM THE DATE OF THIS OFFER AND UPON DUE NOTICE TO THE HOME COUNTRY, MAY ADOPT THE ARRANGEMENTS LAID DOWN IN ITS OWN LAWS ON CEMETERIES AND GRAVES.

10. A HIGH CONTRACTING PARTY IN WHOSE TERRITORY THE GRAVES (BEGIN BRACKET) AND OTHER LOCATIONS (END BRACKET) DESCRIBED IN THIS CHAPTER ARE SITUATED SHALL BE PERMITTED TO EXHUME THE REMAINS FROM THOSE GRAVES (BEGIN BRACKET) AND OTHER LOCATIONS (END BRACKET) ONLY:

(A) IN ACCORDANCE WITH ARTICLE 8(C) OF THIS SECTION; OR
(B) WITH THE AGREEMENT OF THE HOME COUNTRY; OR
(C) WHERE EXHUMATION IS A MATTER OF OVER-RIDING PUBLIC NECESSITY, INCLUDING CASES OF MEDICAL AND INVESTIGATIVE NECESSITY, IN WHICH CASE THE HIGH CONTRACTING PARTY SHALL AT ALL TIMES RESPECT THE REMAINS, AND SHALL GIVE NOTICE TO THE HOME COUNTRY OF ITS INTENTION TO EXHUME TOGETHER WITH DETAILS OF THE INTENDED PLACE OF REINTERMENT.

OTHER PROVISIONS

(BEGIN BRACKET) 11. "HOME COUNTRY" MEANS THE STATE ON WHICH A PERSON DEPENDED ON THE DATE HE DIED OR WAS REPORTED MISSING, OR, IN THE EVENT OF A SUCCESSION OF STATES TAKING PLACE IN RELATION TO THAT COUNTRY, THE STATE ON WHICH SUCH PERSON WOULD HAVE
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DEPENDENT HAD HE NOT DIED OR BEEN REPORTED MISSING (END BRACKET)

(BEGIN BRACKET) 12. THE PROVISIONS OF THIS SECTION DO NOT IMPOSE OBLIGATIONS ON ANY HIGH CONTRACTING PARTY WITH REGARD TO ITS OWN NATIONALS (END BRACKET) END TEXT.

2. SUBSEQUENT TO DELIBERATIONS OF THE WORKING GROUP, THE SOVIETS APPROACHED THE RAPPOREUR AND INSISTED UPON THE FOLLOWING ADDENDUM TO THE WORKING GROUP REPORT. BEGIN TEXT:

"AFTER THE CONCLUSION OF THE DELIBERATIONS OF THE WORKING GROUP, THE RAPPOREUR HAS BEEN ASKED BY ONE DELEGATION TO TRANSMIT TO COMMITTEE II THE FOLLOWING RESERVATIONS WITH REGARD TO THE PROPOSED SECTION I BIS:

1. PARA. 2: ADD "TO THE FULLEST EXTENT POSSIBLE" AFTER "SHALL" IN THE FIRST LINE.

2. PARA. 4: BOTH SENTENCES SHOULD BE CHANGED INTO AN ENDEAVOUR CLAUSE.

3. PARA. 8(A): THE BEGINNING OF THE PHRASE SHOULD READ:

"ENDEAVOUR TO AGREE UPON ACCESS."

4. PARA. 8(C): ADD "TO THE FULLEST EXTENT POSSIBLE" AFTER
"FACILITATE". END TEXT. DALE

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